THE HON'BLE SRI JUSTICE C.Y.SOMAYAJULU

WRIT PETITION NO.23840 of 2004

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%30.08.2005

#1. Dr.V.Sundara Rao, S/o. Sri Veera Swamy, 44 years, R/o.H.No.33-8-25, Kanchirajuvari Street, Tanuku, West Godavari District and two others.

…Petitioners

Vs.

$1. The Director, Town and Country Planning, Government of Andhra Pradesh, Masab Tank, Hyderabad – 500 004 and three others.

…Respondents

Counsel for the Petitioners: MR.M.V.DURGA PRASAD

Counsel for the Respondents 1 and 2: GP FOR GAD & HMA

Counsel for the Respondent No.3: MR.S.NAGESWARA REDDY

(STANDING COUNSEL)

Counsel for the Respondent No.4: MR.C.RAMACHANDRA RAJU

<Gist :

>Head Note:

? Cases referred:

1. (2004) 6 SCC 588
2. AIR 2001 SC 1409
3. 2002 (3) ALT 536 (D.B.)
4. AIR 1993 ANDHRA PRADESH 20
5. 2005(4) ALT 252
6. 1981 AN.W.R.166
7. AIR 2005 SUPREME COURT 1
8. AIR 1974 SUPREME COURT 2177
9. (2003) 10 SCC 445

THE HON'BLE SRI JUSTICE C.Y.SOMAYAJULU

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Date: 30-08-2005

Between:

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ORAL ORDER:

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Questioning the permission given to the 4th respondent by the 3rd respondent Municipality for construction of 24 apartments consisting of stilt and five floors, in a site measuring 618.66 square yards in Kanchirajuvari Street, Tanuku, petitioners filed this petition.

2. The case of the petitioners, in brief, is that they are all residents of Kanchirajuvari Street, which is also known as Babugari Street, and connects Rashtrapathi Road on the North and Sthree Samajam Road on the South. The width of Kanchirajuvari Street varies from 17'6" to 19'6", including the open land and drainage channel constructed on the road margins on its both sides. Respondents 1 to 3 refused permission to M/s.B.S.R.Constructions to construct 30 apartments with stilt, ground and 4 floors in about 610 square meters of site in Kanchirajuvari Street, opposite to the house of the 1st petitioner on the ground of the road width being less than the mandatory 40 feet. Though the width of the road is not increased thereafter, respondents 1 and 3 seem to have granted permission to the 4th respondent to construct a multi-storied building in the Kanchirajuvari Street on the basis of a report submitted by the second respondent relating to road width, without taking into consideration the objections of the residents of Kanchirajuvari Street. Since the apartments proposed to be constructed by the 4th respondent would violate the provisions of the A.P. Apartments (Promotion of Construction and Ownership) Act, 1987 (hereinafter referred to as 1987 Act) and the Rules made thereunder, and also the provisions of the A.P. Fire Services Act, 1999 (hereinafter referred to as 1999

Act) and the various G.Os., relating to set backs, open spaces and fire safety regulations, permission granted to the 4th respondent is liable to be set aside.

3. The allegations in the counter affidavit of the first respondent (filed on behalf of respondents 1 and 2), in brief, are, the width of the Kanchirajuvari street varies from place to place and is not uniform, the minimum width being 18' and the maximum width being 32'. With a view to reduce traffic congestion, 3rd respondent Municipality proposed to connect Rastrapati Road and Sthree Samajam Road by widening the Kanchirajuvari street upto 40' and accordingly prepared a master plan under Section 14(3) of A.P. Town Planning Act, 1920, for which the Government has given its approval vide G.O.Ms.No.480 M.A., dated 19-9-2000. It is true that permission for construction of a multi-storied building was not granted to M/s.B.S.R.Constructions due to insufficient road width. Since the report of the second respondent, who made a personal inspection of the area on 12-10-2004 in pursuance of the application for construction of a multistoried building submitted by the 4th respondent, showed varying road width, second respondent returned the application of 4th respondent on 06-11-2004 for non-availability of 9 meters width road, with instructions to the 3rd respondent Municipality to release sanction only if 9 meters width road is physically available. Only after the 3rd respondent Municipality furnished information that the existing road width in front of the site of the 4th respondent is 9 meters, was the permission accorded to the 4th respondent for construction of the apartments, in view of the G.O.Ms.No.422 M.A., dated
31-07-1998.

4 . The allegations, in brief, in the counter affidavit filed on behalf of the 3rd respondent are, the width of Kanchirajuvari Street, including drain on either side, varies from 17'6" to 19'6" but the width of that road from Sthree Samajam Road upto Door
No.33-8-20 is uniformly 30'. Keeping in view the narrowness of that road and the density of the vehicular traffic plying thereon, a 40' wide road was proposed in the master plan, and so whenever permissions for construction of new buildings are sought in that road, owners are being asked to hand over the required width of site,

free of cost, for implementation of the master plan and for the proposed road widening, as per G.O.Ms.No.422 M.A., dated
31-7-1998. Application submitted by M/s.B.S.R.Constructions was returned due to insufficient road width. Permission sought by the 4th respondent for construction of apartments in the site bearing No.33-8-20 was approved after getting clearance from the first respondent because the same is in accordance with the rules and regulations, including the road width.

5. On behalf of the 4th respondent, its Managing Partner filed his counter affidavit inter alia contending that 3rd respondent, after obtaining approval from the 1st respondent, granted permission to construct apartments to it as the existing road width is 9.14 meters from Stree Samajam Road upto its site, though the width of the remaining portion of the road, from their site upto Rastrapati Road varies from 19' to 32', and since Government approved the master plan in G.O.Ms.No.480 M.A., dated 19-9-2000, for widening the Kanchirajuvari street upto a width of 40', with a condition that it should hand over 3 meters wide strip of its site abutting the road, to the local authority. Only after obtaining a report from the 2nd respondent that on physical verification it was found that the width of the road is 30', and that the required site was handed over to the 3rd respondent under a gift deed, permission to construct was accorded to it. The width of the Kanchirajuvari Street stood reduced only due to encroachments, which are not being removed by the 3rd respondent. Rejection of the application of M/s.B.S.R.Constructions for construction of a multi-storied building has no relevance for considering its application. The allegation that its proposed construction would violate 1987 and 1999 Acts and the Rules made thereunder is not true. Since huge amounts are invested for purchase of the site and since foundation was already laid and since advances from several willing purchasers of apartments were taken, it would be put to great hardship if construction is stayed and so the petition may be dismissed.

6. The main contention of the learned counsel for petitioners is that since the width of Kanchirajuvari Street, is between 17'6" to 19'6", from the site of 4th respondent to Rastrapathi Road, petitioners and other residents of that street who are residing near that narrow width of road would be put to any amount of inconvenience and

nuisance due to traffic congestion etc. It is his contention that inasmuch as 4th respondent did not also comply with the requirements of 1987 and 1999 Acts, it cannot be permitted to proceed with construction of a multi-storied building in that street and so respondents 1 to 3 granting permission to the 4th respondent when they refused permission for construction of such type of a building at a place which is a few yards away from the site of the 4th respondent is highly irregular and improper. He placed strong reliance on **M.C.MEHTA v. UNION OF INDIA**, where it is held that Municipality has constitutional responsibility in respect of matters enumerated in Sch.XII of the Constitution, on **V.M.KURIAN v. STATE OF KERALA** arising under the Kerala Municipalities Act, 1964, where it was held that rules relating to restriction with regard to maximum height of the building contained in the Kerala Buildings Rules, 1964 and the Kerala Municipalities Act, 1964 are mandatory in nature and are required to be complied with and that there cannot be any relaxation of the rules which are mandatory in nature. He also relied on **DR.C.KULSUM REDDY v. STATE OF A.P.** in support of his contention that unauthorized constructions cannot be regularized. He also relied on **SARADA BAI v. SHAKUNTALA BAI** and **YASEEN KHATOON v. COMMISSIONER, MUNICIPAL CORPORATION OF HYDERABAD** in support of his contention that a neighbour can question the unauthorized constructions and prevent the same through Court. He also relied on **S.NARASIMHA REDDI v. CORPORATION OF HYDERABAD** and **FRIENDS COLONY DEVELOPMENT COMMITTEE v. STATE OF ORISSA** in support of his contention that unauthorized or illegal constructions cannot be permitted by the municipalities. He also relied on **K.RAMADAS SHENOY v. THE CHIEF OFFICERS, TOWN MUNICIPAL COUNCIL, UDIPI,** where it was held that inasmuch as illegal construction of a cinema hall would materially affect to the residents in a residential area, Municipal authorities cannot grant permission for construction of a cinema hall in a residential area. He also relied on **THE SUPREME COURT MONITORING COMMITTEE v. MUSSOORIE DEHRADUN DEVELOPMENT AUTHORITY,** where the apex Court took judicial notice of the unwillingness or inability of the municipal authorities all over India to stop illegal constructions and contended that courts should come to the rescue of the residents of the area when the local authority fails to discharge its statutory duties. According to him, the partners of 4th respondent, in order to show that the width of the road in front of its site is more, had changed the course of the drainage channel and showed

the area thus annexed by them as a part of the road to mislead the authorities, when the width of the Kanchirajuvari Street being three meters bears testimony by the plaques put up by the municipality at both the ends of that road.

7. The contention of the learned Government Pleader, appearing for respondents 1 and 2, is that since respondents

1 and 2 issued directions to the 3rd respondent to release the permission only if all the mandatory requirements are satisfied by the 4th respondent, they cannot be said to have committed any irregularity.

8. The contention of the learned standing counsel for 3rd respondent is that since fourth respondent complied with all the requirements and had donated the requisite land and since Kanchirajuvari Street is proposed to be widened to 40' as per the master plan, 3rd respondent did not commit any irregularity in according permission to the 4th respondent for construction of a multi-storied building.

9. The main contention of the learned counsel for 4th respondent is that since this petition is filed only with a view to harass the partners of 4th respondent, who invested huge amounts into the project, and since the real intention of the petitioners is to prevent any structure above the height of their buildings coming up in Kanchirajuvari Street, this petition is vitiated by mala fides and lack of bona fides, because the width of the road in front of the proposed construction is more than 30' and since an area of 22.38 square meters equivalent to 26.76 square yards was gifted by the fourth respondent to the 3rd respondent under a registered gift deed dated 11.11.2004 and since Kanchirajuvari Street would be widened to 40' as per the master plan approved by the Government. It is his contention that question whether 4th respondent complied with the provisions of 1987 Act or 1999 Act and the Rules made thereunder would be relevant only at the time of completion of the building but not at this stage.

10. In reply, the contention of the learned counsel for petitioners is that as per

Section 13 of 1999 Act construction of a high raise building can be commenced only after obtaining permission from the officials of the fire service department and since no such permission is produced, 4th respondent, in any event, cannot proceed with the construction of the building.

11. On being asked, the learned counsel for 4th respondent produced the sanctioned plan, which shows that the site of the 4th respondent, in which the construction is approved, is bounded on the North by the house of G.Raja Rao (35.35 meters), on the East by High School ground (14.63 meters), on the South by Amrutha Apartments (35.35 meters) and on the West by road (14.63 meters). The total width of the road in front of the site of the 4th respondent, Amrutha Apartments and the house of G.Raja Rao is shown as 12.20 meters (including 1.53 meters width area on both sides of the road, described as 'M.P. widening', probably denoting Master Plan widening) in that plan. Even from that plan it is clear that the width of the road actually existing, in front of the site of the 4th respondent, is 9.14 meters. As per the approved plan the height of the construction of the stilt is 2.50 meters and five floors each of a height of 2.75 meters. Thus, excluding the height of parapet wall on the terrace portion, the total height of the proposed construction would be 16.85 meters. Copy of the gift deed dated 11-11-2004 produced by the learned counsel for 4th respondent shows that a strip of 1.53 meters width and 14.63 meters length was handed over to the 3rd respondent by the partners of the 4th respondent as a gift.

12. Admitted topographical sketch of the Kanchirajuvari Street, with the existing buildings, is produced before me. As per that sketch the width of Kanchirajuvari Street from Sthree Samajam road upto the Northern boundary of the site of the 4th respondent is 30'. From the house of G.Raja Rao (shown in the approved plan) which is adjacent to the site of the 4th respondent on the North and which is shown as property bearing No.33-8-19 in the admitted sketch, the width of the Kanchirajuvari Street upto Rashtrapathi Road varies from 20'5" to 19'. As per the said sketch the width of the road in front of the house of the 1st petitioner is 31'1" and so it is clear that the width of Kanchirajuvari Street is not uniformly of 30' throughout, because it varies from 30' to 31'1"; 20'5" to 22' and 22' to 19' at different places, though it is said to be of 30' width from the Northern end of the 4th respondent's site

upto Stree Samajam Road on the South.

13. Clause 6.3 of the G.O.Ms.No.422 M.A., dated 31-07-1998, relied on by the learned counsel for both sides, reads:

> "Minimum abutting road width:
>
> Group Housing shall be permitted on 12.2. Mtrs. (40) wide roads. However Group Housing shall also be permitted on 9 Mtrs wide road subject to handing over of 3 Mtrs. Wide strip to the local authority on free of cost subject to the condition that the remaining plot shall be 335 Sq.Mtrs. or more."

'Group Housing' as per the clause 6.1 of the said G.O. means 'development of buildings having five or more dwelling units and common services on a given site or plot'. So, the sanctioned plan of the 4th respondent clearly relates to 'Group Housing'. Since the net area belonging to the 4th respondent, available for construction as per the approved plan, is 494.79 square meters, condition relating to the plot being more than 335 square meters mentioned in the above clause 6.3 is satisfied by the 4th respondent, but the point is whether the condition relating to the width of the road in that clause is satisfied or not.

14. The contention of the learned counsel for the 4th respondent is that since 4th respondent gifted a part of its land to the 3rd respondent Municipality and since the approved master plan proposes widening of the Kanchirajuvari Street to 40', condition relating to the minimum width of the road prescribed in clause 6.3 extracted above is satisfied. The contention of the learned counsel for petitioners is that since it is not known when the Master Plan would be implemented, and since the owners of the flats that come up have a right to use the road to go to Rashtrapathi Road and Stree Samajam Road also and since the width of the road from the northern boundary of the site of the 4th respondent upto Rastrapathi Road is less than 30', to be precise varies from 30' to 20'5", 20'5" to 22' and 22' to 19', there would be any amount of inconvenience to the petitioners and the other house owners in that street.

15. From a meaningful and a proper construction of clause 6.3 extracted above, the width of the road in which group housing i.e. multi-storied flats are to be constructed should be 9 metres or 30 feet from one end to the other end throughout, and so it is not enough if the width of the road from the proposed construction to one end of the road only is 9 meters. In view thereof, I am unable to agree with the contention of the learned counsel for 4th respondent that since the width of the road in front of the 4th respondent's site towards South upto Mahila Samajam road is uniformly 30' and above, condition relating to road width mentioned in clause 6.3 is satisfied.

16. Fourth respondent gifted an area of 22.38 meters i.e., 14.63 meters length X 1.53 meters width abutting the road to the 3rd respondent, when the requirement as per the above extracted clause 6.3, is the applicant handing over of 3 meters wide strip to the local authority. Since the width of the site gifted by the 4th respondent to the 3rd respondent is 1.53 meters only, it cannot be said that 4th respondent complied with the condition relating to gifting of the area by it mentioned in clause 6.3 also. The contention of the learned counsel for 4th respondent that 4th respondent need gift only 1.5 meters wide site and the owner opposite to the site of the 4th respondent will have to gift 1.53 meters site cannot be accepted, because the owner of the site opposite to the site of 4th respondent has no obligation to gift any area to 3rd respondent Municipality, that too to facilitate the constructions to be made by the 4th respondent. Only when the owner of the site opposite to the site of the 4th respondent also wants to construct multi-storied flats would he be under an obligation to handover 3 meters wide site to the 3rd respondent Municipality, but he is under no obligation to hand over any site of his for the benefit of the 4th respondent, when clause 6.3 extracted above clearly requires the applicant only gifting 3 meters wide site to the local authority.

17. The other contention of the learned counsel for 4th respondent relates to the approval of the master plan to widen Kanchirajuvari Street to 40' and the liability of the owner of the site opposite to the site of the 4th respondent to surrender a portion of his land, or his land being acquired for implementation of the master plan, and for

that reason, according to the learned counsel, it would be enough if 4th respondent gifts 1.53 meters wide site to the 3rd respondent. I am unable to agree with the said contention for two reasons, (i) if master plan is implemented and the road is made into 40' wide road question of 4th respondent gifting any property does not arise because group housing can be permitted on 40' wide road, and (ii) as per clause 6.3, persons intending to construct group housing in a street of 30' width have to hand over 3 meters wide strip to the local authority free of cost. Thus, handing over 3 meters wide strip to the local authority free of cost by the builder of 'group housing' would arise only if the condition precedent of the entire road in front of the proposed 'group housing' being 9 meters i.e. about 30 yards in width. So, if the width of the entire road is not 9 meters throughout, even if the builder hands over 3 meters wide strip in front of the building to be constructed free of cost to the local authority, he cannot be granted permission to construct.

18. Since the width of Kanchirajuvari Street throughout is not uniformly 9 meters and is far less than 9 meters towards Rashtrapathi Road side, and since clause 6.3 above extracted is not complied with in its entirety by the 4th respondent, respondents 1 to 3 were in error in approving the plan of the 4th respondent.

20. The other contention relates to the 4th respondent not obtaining required permissions under the 1999 Act. As per Section 13 of 1999 Act (which came into force on 01-02-2001) any person proposing to construct a high raise building or a building to be used for any purpose other than residential purpose, or a building proposed to be used for residential purpose of more than 15 meters in height, such as group housing, multi-storey flats, work-up apartments, etc., shall have to apply to the Director General or any member of the service duly authorized by him in this behalf, before submitting the building plans to the authority or officer competent to approve the same under the relevant law for the time being in force, for a no objection certificate along with such fee as may be prescribed. Since the building proposed to be constructed by the 4th respondent is of a height of 16.85 meters, provisions of Section 13 of 1999 Act have to be complied with by the 4th respondent

before its plan can be sanctioned or approved by the 3rd respondent. Since no material is placed on record to show that the said requirement was complied with, I see no force in the contention of the learned counsel for 4th respondent that a no objection from the fire services authorities can be obtained subsequently.

21. In view of my above findings, I feel it not necessary to go into the other contentions raised by the learned counsel for the parties.

22. Hence, the petition is allowed. Rule Nisi is made absolute and the 4th respondent is restrained from proceeding with the construction of a multi-storied building in its site in the Kanchirajuvari Street, and respondents 1 to 3 are directed to see that no multi-storied building in Kanchirajuuvari Street is constructed till the requirement of clause 6.3 of the G.O.Ms.No.422 M.A., dated 31-07-1998 and Section 13 of the A.P. Fire Service Act, 1999, are satisfied. Parties are directed to bear their own costs.

(C.Y.Somayajulu, J.)

Date: 30-08-2005

Cvrk

Note: Office to furnish copy

by 05-09-2005.

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Note: L.R.copy to be marked

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